

Calendar No. 45

116TH CONGRESS }
1st Session

SENATE

{ REPORT
116-14

PROVIDING ACCOUNTABILITY THROUGH
TRANSPARENCY ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 395

TO REQUIRE EACH AGENCY, IN PROVIDING NOTICE OF A RULE
MAKING, TO INCLUDE A LINK TO A 100 WORD PLAIN LANGUAGE
SUMMARY OF THE PROPOSED RULE



MARCH 25, 2019.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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PROVIDING ACCOUNTABILITY THROUGH TRANSPARENCY ACT OF 2019

MARCH 25, 2019.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 395]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 395) to require each agency, in providing notice of a rule making, to include a link to a 100 word plain language summary of the proposed rule, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	2
IV. Section-by-Section Analysis	2
V. Evaluation of Regulatory Impact	3
VI. Congressional Budget Office Cost Estimate	3
VII. Changes in Existing Law Made by the Bill, as Reported	4

I. PURPOSE AND SUMMARY

The Providing Accountability Through Transparency Act of 2019 requires Federal agencies to include, as part of a notice of proposed rulemaking (NPRM), a link to a 100-word or less, plain language summary of the proposed rule. The summary itself will be made available on the website “regulations.gov.”¹

¹On June 28, 2017, the Committee approved S. 577, Providing Accountability Through Transparency Act of 2017. That bill is substantially similar to S. 395. Accordingly, this committee re-

Continued

II. BACKGROUND AND THE NEED FOR LEGISLATION

The Administrative Procedure Act (APA)² forms the procedural basis by which Federal agencies issue most regulations and other policies. The APA, which has been called the result of a “fierce compromise,”³ is intended as a means to enable agencies to engage in policymaking while promoting the interests of those nongovernmental parties affected.⁴ Specifically, the procedure outlined in Section 553 of the APA for so-called “informal” rulemaking “establishes the minimum procedural requirements”⁵ that agencies must observe for most regulations.⁶ Because regulations issued through such a process are generally considered legally binding, the APA formalizes a notice to the public of a forthcoming rule, and at that point establishes an early opportunity for the general public to submit comments.

However, the public’s ability to offer useful feedback through comments, especially parties who may not be experts in the particular subject of the rule, is dependent upon the clarity and simplicity of the proposal. Therefore, this bill offers a uniform and universally accessible standard for agencies to better communicate their intended policies to the public: a 100-word plain language summary made available by agencies at *regulations.gov*.

III. LEGISLATIVE HISTORY

Senator James Lankford (R–OK) introduced S. 395 on February 7, 2019, with Senators Kyrsten Sinema (D–AZ), James E. Risch (R–ID), Gary C. Peters (D–MI), Pat Roberts (R–KS), and Doug Jones (D–AL). The bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 395 at a February 13, 2019 business meeting.

The Committee ordered S. 395 reported favorably on February 13, 2019, by voice vote *en bloc*. Senators present for the vote were Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, Sinema, and Rosen.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides the bill’s short title, the “Providing Accountability Through Transparency Act of 2017.”

Section 2. Requirement to post a 100 word summary to regulations.gov

This section amends the list of information required for inclusion when agencies issue a notice of proposed rulemaking to add that they also include a link to a 100-word or less summary of the proposed rule. The summary shall be posted to *regulations.gov*.

port is in large part a reproduction of Chairman Johnson’s committee report for S. 577, S. Rep. No. 115–120.

²Pub. Law 79–404, 60 Stat. 237.

³George B. Shepherd, “Fierce Compromise: The Administrative Procedure Act Emerges from New Deal Politics,” *Northwestern University Law Review*, Vol. 90, No. 4.

⁴*Id.*

⁵Emily S. Bremer, “A Primer on the Informal Rulemaking Process,” *Administrative Fix* (blog), Administrative Conference of the United States, May 10, 2013, <https://www.acus.gov/newsroom/administrative-fix-blog/primer-informal-rulemaking-process>.

⁶5 U.S.C. § 553.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 1, 2019.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 395, the Providing Accountability Through Transparency Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Hughes.

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 395, Providing Accountability Through Transparency Act of 2019				
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on February 13, 2019				
Millions of Dollars	Direct Spending	Revenues	Net Deficit Effect	Spending Subject to Appropriation
2019	0	0	0	0
2019-2024	*	0	*	*
2019-2029	*	0	*	n.a.
Pay-as-you-go procedures apply?	Yes	Mandate Effects		
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No	
		Contains private-sector mandate?	No	
n.a. = not applicable; * = between zero and \$500,000.				

S. 395 would require agencies to post an internet address link to a 100-word maximum summary of any proposed rule published in the *Federal Register* that would take the reader to the concise summary posted on *regulations.gov*. The June 1, 1998, Presidential Memorandum on Plain Language and Executive Order 13563 already require agencies to use plain language in all proposed and final rules. CBO expects that preparing the short summary of proposed rules under S. 395 would not significantly increase agencies'

administrative costs. CBO estimates that implementing S. 395 would have no significant cost over the next five years.

Enacting S. 395 could affect direct spending by some agencies (such as the Tennessee Valley Authority) because they are authorized to use receipts from the sale of goods, fees, and other collections to cover their operating costs. Because most of those agencies can adjust the amounts collected as operating costs change, CBO estimates that any net changes in direct spending by those agencies would be negligible.

The CBO staff contact for this estimate is David Hughes. This estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 395 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 5—ADMINISTRATIVE PROCEDURE

* * * * *

Subchapter II—Administrative Procedure

* * * * *

SEC. 553. RULE MAKING

(a) * * *

* * * * *

(b) * * *

(1) * * *

(2) reference to the legal authority under which the rule is proposed; **[and]**

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved**[.]**; *and*

(4) *the Internet address of a summary of not more than 100 words in length of the proposed rule, in plain language, that shall be posted on the Internet website under section 206(d) of*

the E-Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as regulations.gov).

